DOCUMENT RESUME

ED 468 126 EA 031 845

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TITLE	Children's Rights and Wrongs: Lessons from Strasbourg on Classroom Management.
PUB DATE	2002-03-00
NOTE	29p.; Paper presented at the Annual Meeting of the American Educational Research Association (New Orleans, LA, April 1-5, 2002).
PUB TYPE	Information Analyses (070) -- Opinion Papers (120) -- Speeches/Meeting Papers (150)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	Child Behavior; *Civil Liberties; Classroom Techniques; Comparative Analysis; *Corporal Punishment; *Court Litigation; *Discipline; Elementary Secondary Education; Foreign Countries; *School Law; Student Behavior; *Student Rights; Teacher Behavior
IDENTIFIERS	*European Court of Human Rights; Tinker v Des Moines Independent School District

ABSTRACT

Approaching corporal punishment of children in school as a human-rights issue, this paper explores the impact of the European Court of Human Rights on education policy in Europe and the implications it raises for school policy in the United States. Simply stated, the court holds that students have legal rights that schools are obligated to respect, particularly as they relate to corporal punishment. This paper discusses students' rights within a central conceptual framework of human rights. It examines school discipline from a historical perspective; includes a brief literature review on student rights, particularly as they relate to physical discipline; presents theoretical arguments for extending rights to students; and presents an overview of litigation from the European court that advances student rights. In addition, there are suggestions for policymakers, administrators, and teachers for creating policy that addresses discipline and classroom management while respecting the authority of teachers and the rights of students in the classroom. Finally, there is a brief analysis and interpretation of the rulings of the European court on the rights of both teachers and students, and implications for policymakers stemming from these rulings. (Contains 52 references and a table of eight representative cases from European courts.) (WFA)

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Paper submitted to SIG: EDUCATION AND LAW

ED 468 126

CHILDREN'S RIGHTS AND WRONGS: LESSONS FROM STRASBOURG ON CLASSROOM MANAGEMENT

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March 2002.

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CHILDREN'S RIGHTS AND WRONGS: LESSONS FROM STRASBOURG ON CLASSROOM MANAGEMENT.

Introduction

This paper explores the impact of the European Court of Human Rights in Strasbourg on education policy in Europe, and the implications it raises for schools in America and elsewhere. What we now know in Europe is that students have legal rights which schools are obliged to respect, especially as they relate to physical chastisement. The U.S. Supreme Court was particularly active in the 1960's advancing students rights in a number of landmark cases, such as Goss v Lopez, Re Gault, Re Winship, and Tinker v Des Moines, and from the 1980's onwards in Europe there has been similar litigation which has extended the concept of rights in the classroom. Whilst America is not a signatory to the European Court of Human Rights, this jurisprudence provides powerful moral if not legal persuasion. Knowledge has come about as a result of litigation taken to Strasbourg which has tested the extent of teacher authority, especially as it relates to classroom management and the use of corporal punishment. The originality of this paper lies in the fact that I have conducted research in Strasbourg in the 1980's and have since then monitored the impact of its jurisprudence on education policy. This has been set against similar research I have conducted in Australia, South Africa and the US. The relevance of this topic to the conference theme lies in my accumulated knowledge from Strasbourg and elsewhere about the shifting nature of teacher-student relations, the validity of claims for "children's rights", and parents and children's willingness to litigate.

The discussion draws on (i) a central conceptual framework of human rights. Set within this context the paper covers: (ii) an historical perspective on school discipline and classroom management (iii) a brief literature review on the nature of "rights" especially as they relate to physical integrity (iv) theoretical arguments for extending rights to students and (v) litigation from Strasbourg advancing students rights at school. There is also a focus on (vi) the practical implications for school boards and administrators in creating policy, which supports rights in the classroom, and (vii) analysis and interpretation of the jurisprudence with particular reference to the rights of both teachers and children.

(i) Conceptual Framework

Schools bear the responsibility for creating an ordered community and in the light of legal and social norms teachers in Europe and elsewhere have been forced to abandon corporal punishment as part of their repertoire of sanctions [1]. This paper explores these issues within an overall framework of human rights. It does not seek to promote the concept of children's rights in isolation, but instead to locate them within the context of the school as a community in which rights are owed to all members. Furthermore, we increasingly here talk of "rights", espoused by a number of groups on behalf of a variety of causes, but rather less is said about corresponding responsibilities or duties. I take the position that rights and responsibilities are owned

by and owed to children, teachers and other people involved in education, and that by promoting this view we make schools a better place for everyone.

It is useful at the outset to examine the notion of "rights" per se and to locate the ambiguity which surrounds the concept in a philosophical framework. Further particular reference is made to the context of the school and how the child's right not to be subjected to sanctions such as corporal punishment limits the rights of the teacher.

Rodham (1975) described children's rights as 'a slogan in search of a definition' (p.487). Six years later she observed that 'although that search is still continuing, there has been significant progress in our efforts to define and achieve children's rights.' Freeman (1983) states that discussion of children's rights is 'essentially ambiguous' embracing 'a number of disparate notions' (p.72). Accordingly, it is important to attempt definition of the term 'rights' and separate it from other terminology before considering what rights children should be entitled to.

The term 'rights' is suffuse with connotations of moral and legal rights, liberties and freedoms, positive and negative claims and entitlements. It is used by campaigners lobbying for a host of different causes within society. The application of the term 'rights' to the category of children, causes further confusion. This is because, state Gross and Gross:

> the rights of children is an abstract, general, legalistic concept. It is an idea, an ideal, at best an affirmation of principle. It does not help children until it is put into practice (p.7).

For Rodham (1979) the phrase refers to a series of relations: the family, society and juvenile-orientated institutions, against which claims can be made. Freeman adds that children's rights is 'a phrase that continues to be used imprecisely' as it tends to be 'something of a catch-all idea embracing different notions' (p.32). Furthermore, when the different rights are reviewed 'it becomes apparent they are conceptually sub-divided into categories and that they are urged against different persons and have different enforcement problems' (*ibid.*). (Some of these categories are discussed later in the paper). Rodham points out that:

> when we talk of children's rights we are often not talking of legal or institutional rights at all. We are referring most often to moral... rights, usually in the sense of ideal rights, against those who make society's rules, usually that is the legislature, to convert their moral right into a positive legal one (*ibid.*, p.35).

So it is arguable that the abolition of corporal punishment in British schools was a moral right for pupils, converted into a legal right by virtue of the pressure to implement the *Campbell and Cosans* ruling and as manifested in the 1986 Education Act. Further, states Freeman, 'many references to children's rights turn out on inspection to be aspirations for the accomplishment of particular social or moral goals' (p.37). Again, this is applicable to the desire to abolish corporal punishment which was for many a 'social or moral goal.' Furthermore, anti-discrimination legislation has tended to express the language of aspiration, of how we expect people should be treated.

A definition of the term 'human rights', states Hunter (1979), can be broad in scope, in order 'to throw a mantle of respectability around whatever private interest is being espoused at the moment', or narrow, 'focusing on what might more accurately be called anti-discrimination legislation' (p.78). Fairweather (1979) classifies human rights as

> rights, liberties and freedoms [which] define the relationships between an individual or group and the state and between individuals and groups themselves (p.309).

There is an important distinction to be made between 'rights, liberties and freedoms'. A 'liberty' tends to be very broad in nature, and enables a person to do anything which is not specifically prohibited by law. The words 'freedom' and 'liberty' are often used interchangeably. Fundamental freedoms which are stated in a Bill of Rights, such as that of the United Kingdom, normally include freedom of religion and freedom of assembly. A 'right' is more narrowly defined, and is something granted to a person which requires positive action on the part of the government to ensure it – such as the 'right to education' which is stipulated in a number of international treaties on human rights. Further, the word 'rights' is an umbrella which incorporates political, legal and egalitarian rights. Finally, Wasserstrom (1964) states that human rights are not absolute, in that 'there are no conditions under which they can properly be overridden' (*ibid.*). A case in point is that under the Education Act, (1986) children's rights not to be inflicted with corporal punishment is overridden under certain circumstances, such as when averting injury to people or property.

Discussion of 'rights' also brings into question the correlative with 'duties'. Feinberg (1966) delineates ten kinds of duties: including duties of respect, status and obedience (pp.137-142). Of particular relevance to this paper is his argument that:

> a duty, whatever else it be, is something required of one. That is to say first of all that a duty, like an obligation, is something that *obliges*. It is something we conceive of as *imposed* upon our inclinations, something we must do *whether we want to or not* (p.140).

Teachers in Europe may now be said to have a duty to refrain from corporally punishing their pupils whether they 'want to or not'. Unless that is, they are prepared to accept the consequences, or what Feinberg calls the 'liability'. Similarly, the notion of 'duty' has application for 'the right to education'. This right often implies obligations and duties on the part of the state and schools to provide education for children of a certain age and also imposes duties on the child to adhere to school regulations. Contradictory and confusing ideas have been expressed in education policy in the past decade regarding duties. The Government in Britain has espoused the notion of children's and parents' rights but has said very little as to their responsibilities. Conversely teachers have been bombarded with demands, increasing their responsibilities but there has been mostly silence as to their rights, a point we will return to later. But there is still one way in which rights can be further delineated, and that is as substantive and procedural rights. The former refers to legal claims such as the right to education as stipulated under the *European Convention on Human Rights*. The latter ensures fairness during the process of decision making. King and Trowell (1992) notes that:

> the concept of procedural rights may extend to any situation where adults have power over children's lives, such as schools... and may require some complaints procedure to enable the child's grievances to be heard (p.116).

This point that the principle of 'due process' should be incorporated into disciplinary policy and codes of conduct is a central feature of American school policy. Finally, there is the issue of setting aside other people's rights. Wringe contents that:

> though... in certain circumstances it may be legitimate or even obligatory to set aside or overrule a right, the person on the receiving end of such action remains the victim of a wrong (p.29).

Presumably, therefore, if a child was debarred from receiving education, perhaps for unruly behaviour, the right to education might be seen as having been violated and the child becomes 'the victim of a wrong', despite the cause of the debarrement. Likewise, teachers in Britain may be perceived as 'the victims of a wrong' now that education legislation effectively fetters their Common Law right to administer corporal punishment. The abolition of corporal punishment might well be seen, therefore, as the overruling of one group's rights for 'the greater good' of another. Teachers may feel that the loss of their right to administer corporal punishment is a 'wrong', or a legitimate 'right' has been unfairly overruled. Thus the issue of corporal punishment in schools serves as a useful example for exploring the concept of rights and the various ways in which the term may be applied, limited or imposed on others. For the purpose of this discussion, therefore, we can summarise that a 'right' may be defined as a claim or entitlement to an action or service which may be legally enforceable and may place obligations on others to uphold.

This conceptual framework provides a useful backdrop for exploring the issue of corporal punishment which, as the following section demonstrates has a long history.

(ii) Historical Perspective

"I grew up beside you, you smote my back, and so your teaching entered my ear" (pupil to teacher, Ancient Egypt, 2000 B.C.) [2]

Physical chastisement has been used universally in both the home and school for instilling discipline into the young. Discipline for children in ancient Greece and Rome, for example, was characterised by harshness and brutality [3], and the history of childhood chronicles the regular abuse of children by their caretakers [4]. Concepts of morality have placed legitimacy on the practice with not only an acceptance but an expectation that child-rearing and corporal punishment go hand in hand, and this has been carried over into school life.

Rooted in the concept of "original sin", physical chastisement was condoned by parents in Victorian society who expected, and indeed in many instances demanded, that it be inflicted on their offspring. "Original sin", or a state of being alienated from God, was believed to be manifested in acts of sloth or insubordination and teachers were considered to be ideally placed to lead children out of ignorance and sin [5]. (This attitude still remains part of the ethos of some religious schools when administering corporal punishment, and is also sanctioned by some religious organisations, for example the Church of the House of Prayer in Atlanta [6].)

Elsewhere the same ideology was prevalent. For example, in New England the use of corporal punishment was "rooted in the community's understanding of the nature of childhood" states Ryan (1994) and "adults largely viewed children as 'creatures of sin', who were born evil as well as ignorant"(p.72) [7] Indeed "pre-emptive whipping" of new boys took place in some of the country's boarding schools in anticipation of misdemeanours and to endorse the importance placed on "flogging" (ibid, p73). Straus (1994), commenting on the American tradition of using physical chastisement describes it as "beating the devil out of them". Similarly, Scott notes in his British History of Corporal Punishment, that corporal punishment was considered an excellent "instrument for the correction of children", and was used as a panacea for all breaches of discipline (1838, p94). In Scotland, for example, use was made of the "tawse" or strap, whilst in the Isle of Man the "birch" was favoured, and throughout England the cane was in common usage.

It was from the Bible that authority was sought to justify the practice and was amply provided in Proverbs with such precepts as:

"For whom the Lord loveth he correcteth; even as a father the son in whom he deligtheth"(111,12)

"He that spareth the rod hateth his son; but he that loveth him chasteneth him"(X111, 24)

"Chasten thy son while there is still hope, and let not thy soul spare for his crying"

"Thou shalt beat him with the rod, and deliver his soul from hell"(XX111, 14)

Such entreaties are embodied in Samuel Butler's oft-repeated maxim of "spare the rod and spoil the child ", which provided sufficient philosophical and religious justification to carry out what was morally necessary to ensure the salvation of the child. In keeping with this tradition, schoolmasters and mistresses in both maintained and non-maintained (public and non-public) schools dispensed liberal doses of corporal punishment in reflecting the general wishes and expectations of parents.

The courts too have accepted the principle of reasonable punishment by a teacher acting "in loco parentis" as a defence in cases of physical punishment. A tradition evolved in which the teacher sought approval under the umbrella of "in loco parentis" in order to administer corporal punishment and to use detention as a disciplinary measure with impunity (Fitzgerald v Northcote 1865, Mansell v Griffin 1908). This is not to infer, however, that there have been no limits placed on teachers in this area (William v Eady, 1893). The courts have adjudicated on many cases involving discipline and from litigation accumulated over the past one hundred years a number of precepts have emerged. These are that the punishment be reasonable and be given "in good faith", that factors affecting the child should be taken into account; and that the sanction be consistent with school policy and such as the parent might expect if their child did wrong (Partington, 1984).

Adams, in 1984 argued that in order to change the situation:

"the power of a teacher generally in relation to corporal punishment will have to be removed by a legal ruling from the European Court, or an Act of Parliament or by power vested in a local authority"(p.26).

Therein lay the essence of the problem which has faced the profession in the UK, for it is precisely this removal or erosion of teachers' rights to administer corporal punishment which altered their status and which is a central theme of this paper. That the European Court was in a position to affect such a decision by virtue of Britain's membership of the Council of Europe, forms the subject of later discussion. Next we look at the literature which demonstrates the social climate of change,and the groups and individuals challenging the validity of using corporal punishment on children.

(iii) Literature Review

The children's rights movement is an international feature of the 20th century, [8] but its roots can be traced to earlier times. The *Children's Petitions* of 1669 were, in a sense, an attempt to single out children as a special need category and specifically to call for restricting corporal punishment by teachers. The anonymous author of the first petition claimed that:

> the man who is not able to awe and keep a company of youth in obedience without violence and stripes, should judge himself no more fit for than function, than if he had no skill in Latin or Greek'. [9]

Although early attempts to challenge physical chastisement failed, the issue did not disappear and concern over children's welfare continued. Pioneers of the 19th century such as Lord Shaftsbury and writers such as Kingsley and Dickens aimed to awaken the nation's conscience by highlighting the plight of children in Britain and calling for shorter hours and improved work conditions for young children in factories. Whilst these developments were more in the name of children's best interests rather than their 'rights', they laid the foundation of a movement which was to modify the traditional status of children *vis-à-vis* adults.

Early writings on children's rights demonstrate interest in the cause. More (1799) had anticipated the movement towards the recognition of 'the rights of youth, children and babies', as a natural progression of entitlement. [10] Siogvolk (1852) asked the question: 'the 'rights of man' and the 'rights of woman' have been discussed 'ad nauseam'; but who vindicates the rights of children?' (p.32).

Julie Valles (1979) dedicated her autobiographical novel:

> to all those who died of boredom at school or who were made to cry at home, who during their childhood were tyrannised by their masters or thrashed by their parents. [11]

In "Children's Rights", the American writer, Wiggin (1892) argued that 'a multitude of privileges, or rather indulgences, can exist with a total disregard of the child's right' (p.4) and concluded that 'the child has a right to a place of his own, to things of his own, to surroundings which have some relation to his size, his desires and his capabilities' (p.15).

Throughout the 20th century there has been increased concern over children's rights but not until the 1960's did the movement gain momentum and fresh impetus was provided by pupil and student militancy. Freeman (1983) notes that 'the real impetus to children's rights is contemporaneous with the liberation and student movements of

the late 1960s' (p.19). Wringe (1981) concurs that the student unrest in Britain's universities during this time had repercussions in schools, and cites as an example: a strike mounted by the Schools' Action Union in a London comprehensive school resulting in the suspension of pupils. [12] Other instances of such activity included a strike by pupils at Holland Park Comprehensive, [13] a school demonstration attended by 2,500 pupils in 1972 [14] and the establishment of the National Union of School Students with the declared aim of achieving 'a greater degree of democracy in schools and ultimately a say at national level in discussion-making' (*ibid.*). Pupil militancy was supported by the development of underground literature used to publicize the issue of Children's Rights. One particular publication was *The Little Red School book* (1971), translated from the Dutch, which advised children about how they could influence their own lives. With particular regard to school punishment the authors suggested that pupils 'demand your rights but be polite' (p.71).

To see the thrust for children's rights simply as a 'downward seepage' of unrest at university level is to underestimate the cause, for a number of factors were present. Wringe suggests firstly the importance of adult writers such as A.S. Neill [15], who advocated the notion of school democracy. Similarly Firestone (1970) made clear the connection between the liberation of women and that of children, their oppressions being mutually reinforcing and entwined. Secondly, the early 1970s was important for the beginning of the 'de-schooling' debate in which writers addressed the nature of institutionalised education. Jonathan Kozol captured the essence of the mood in his book *Death At An Early Age* (1968). Archard (1993) notes the rejection of established authority and that of the school as a central institution of authority in its own right, and the means by which 'ideologies of deference to authority and hierarchy' transmitted to the young were being challenged (p.46). A third element in the children's rights movement was the support for pupil as well as teacher input into the school curriculum. [16]. A fourth strand was that provided by The National Council for Civil Liberties (NCCL) which issued a series of discussion papers in 1971 [17] entitled *Children Have Rights*, one of which highlighted the unsatisfactory situation of the legal position of children in relation to school authorities and the powers and responsibilities of head teachers. Finally, the NCCL passed an executive resolution in 1972 calling for active campaigning on three specific rights for school children: the abolition of corporal punishment, greater democratic participation of children in the educational process, and the right of children to determine their personal appearance in school. [18].

Reaction by teaching associations to the children's rights movement tended initially to be non-supportive. The National Union of Teachers expressed its concern over the weakening of teacher authority and the Assistant General Secretary of the National Association of School-masters claimed that: 'agitation for children's rights was based on the false premise that 'children from an early age are capable of determining what is good for them'. [19]

The only teaching association declaring itself in favour of children's rights was the left-wing splinter group of the NUT, Rank and File, which fully supported the idea of children participating in school democracy. [20] Although the 1960s and 1970s saw increasing support for recognising children as persons in their own right, there were differing views. For example, in the House of Lords debate on the *Protection of Minors Bill* (1973), [21] Lord Hale maintained that, 'generally speaking, most people are in favour of children' (p.932). What is remarkable about this statement is that in

the 1970s it needed to be said at all. It may well be that 19th century attitudes still have currency and that it cannot automatically be assumed that children in Britain are well-liked or preferred above animals. Indeed cruelty to children became a criminal offence in the country sixty years after similar legislation protecting animal rights. [22]Criticism of this ambivalent attitude is a recurring theme of the children's rights movement.

Across the Atlantic the movement also gained momentum in the 1960s, with state laws highlighting the issue of child abuse and the special needs of children. By the 1970s, notes Margolin (1978), the notion of children's rights entered the debate. Gross and Gross (1977) state that this 'shift is subtle but important' since a need denotes 'dependency', and a right denotes 'equality' (p.317) and they contend that 'we have tended to err on the side of protecting children, often to the degree of infringing their rights' (*ibid.*). By the 1970s, the movement for children's rights was taking form in the United States as young people were perceived to be 'the most oppressed of all minorities' (*ibid.*, p.1.). The movement covered a wide range of issues, and in schools, for example, compulsory attendance and lack of choice within the curriculum were key areas of concern (*ibid.*, p.3.). Initially, states Margolin, 'children in trouble' were the focus of attention but then interest grew to include children in 'intact' homes' (p.445). He concludes that in America, the children's rights movement has been largely concerned with the notion of 'due process', school desegregation, school discipline and freedom of expression.[23]. The cases of *Re Gault*, [24] *Tinker*, [25] *Re Winship*[26] and *Ingraham v Wright*, [27] addressed some of these issues, and in a piecemeal manner human rights were gradually extended to American children. More recently, the issue has been tested out again by the American judiciary, for example, an 11th Circuit judge viewed that a coach's refusal to stop a fight constituted corporal punishment, and Federal courts in five circuits have ruled that excessive corporal punishment violates the Due Process Clause if it is so brutal and harmful that it shocks the court's conscience (Dowling-Sendor, 2001).

Within this brief literature review it is clear that there has been an increase in support for children's rights from a variety of organisations on both sides of the Atlantic for children's rights. Next we turn to the theoretical arguments used to justify extending rights to children.

(iv) Theoretical Arguments for Extending Rights to Students

Are children denied rights which are morally theirs, or do we take the issue of children's rights too far? If children have more rights, does this mean adults have fewer? These are some of the questions we need to consider when justifying children's rights and the implications they have for teacher authority and family autonomy.

Theories about children's rights have tended to be polarised, protection or paternalism versus liberation or self-determination. Traditional values put forward to justify children's rights have involved the 'protectionist theory'. Hobbes described the status of children in the 17th century as 'like the imbecile, the crazed and the beasts, over... children there is no law'.

Accordingly fathers could dispose of the lives and liberties of their children as they saw fit. Locke perceived the parents' role more in the nature of protection and nurture: 'all Parents were, by the Law of Nature, under an obligation to preserve, nourish and educate the children they had begotten'.

John Stuart Mill stated that 'the only purpose for which power can be rightfully exercised over any member of civilised community, against his will, is to prevent harm to others.' This might appear a promising line of approach for justifying children's rights, but he entered a caveat that 'it is, perhaps hardly necessary to say that this doctrine is meant to apply to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood' [28]. Moreover, Mill stated that the power of the state over children's lives could be justified since 'the existing generation is master both of the training and the entire circumstances of the generation to come'[29].

Of the traditional theorist Freeman notes that:

> only in Locke are there any hints of children's rights and these are muted. Yet within Locke are the seeds of a liberal paternalism which... can be used to justify children's rights (p.54).

'Paternalism' has been used to justify intervention into a person's private life for that person's best interests. The problem inherent in the children's rights movement is the *degree of intervention* by parents, adults or state agencies. While the issue of children's rights provokes complex problems with no easy solutions, a fine balance is required, continues Freeman, 'so that the personality and autonomy of children are recognised and they are not abandoned to their rights' [p.i]. Moreover he argues that 'a child has rights whether or not he is capable of exercising any autonomy' (p.57). Protection of children is necessary, therefore, only until they become rational autonomous agents, and justification rests on this vulnerability.

> Talk of children's rights in the twentieth century has predominantly been couched in child-saving language, in terms of 'salvation'. It has usually referred to children's rights, but its essential concern has been with protecting children, rather than their rights (pp.18-19).

The need to protect children which provided the justification for much of the early child legislation of the 19th century, originally focused on conditions of the workplace and the needs of schooling. Today this theory has been extended into the home and, some would say, threatens to violate family autonomy.

Margolin notes that 'the early child-savers were concerned with special needs, but contemporary liberationists stress equality' (p.446). Notions of equality are found in a further theory of rights conceived in terms of liberation and self-determination. The American writer Holt (1974) is a fervent advocate of this philosophy which is concerned with the proposal that young people be given 'the rights, privileges, duties and responsibilities' normally available to adults (p.15). This theory gives children 'the right to do, in general, what any adult may legally do' (p.16). Holt sees himself as belonging to the school of advocates interested in protecting children's rights rather than in protecting children *per se*. The 'liberation' approach to children's rights calls for their rights to be equal to that of adults and, as proposed by Holt, this includes

voting and contractual rights. Similarly, Farson (1978) states, overriding all 'birth rights' is the right of 'self-determination' and he believes that 'children, like adults, should have the right to decide the matters which affect them most directly' (p.27). He anticipates opposition to such an idea from those who are closest to the situation, parents and teachers.

So far we see a dichotomy between 'protecting' children and protecting their 'rights' but the two need not be mutually exclusive. The liberationist case proposed by Holt and Farson has received severe criticism for the degree to which it would extend children's rights. Freeman sees it as doing the cause disservice, for it is 'grist for the media's mill which, on the whole, would ridicule the whole notion of children's rights,' and due to such theories of child liberation, 'it is easy to dismiss the credibility of the whole argument for children's rights' (1983a, p.3).

A further theory of children's rights is that contained within Freeman's model of 'liberal paternalism'. He contends that:

> the general justification of children's rights lies within an overarching theory of human rights. A theory of human rights requires the treatment of persons as equals. It expresses a normative attitude of respect for individual autonomy' (p.54).

Whilst there is an element of paternalism in Freeman's theory, he argues that when children display capability of rational autonomy, they should be entitled to a more liberal type of treatment. In brief, this theory can be described as quasi-paternalistic, drawing on both paternalism and liberalism.

If we look at recent legislation we see a shift from concern with protecting children to protecting their rights. *The Children Act* (1989) in Britain was introduced as the most comprehensive and far-reaching reform of childcare law in living memory [29]. Prior to this, note Lyon and Parton (1995), English law was 'too reliant on notions of welfare paternalism which viewed children as defenceless... and in need of protection by state agents... who knew what was in children's interest' (p.41). There was no attempt to desegregate the rights of the child as distinct from those of the parents. The 1989 Act was the first attempt to redress this balance and 'the first English Law in which children's rights are taken seriously and not simply identified within a unified notion of welfare' (*ibid.*). 'Parental responsibility' rather than 'parental rights' is a key characteristic of the legislation, a move which implies 'a re-conceptualisation of children as persons to whom duties are owed, rather that as possessions over which power is exercised' (*ibid.*).

Accommodating children's views, recognising their ability to act independently, and giving special attention to the older 'child', ie 16-17, all feature within the 1989 Act. This can be seen potentially to challenge and diminish the rights of adults. Lyon and Parton note:

> the way children's rights are framed in the legislation is not primarily concerned with improving the rights of children *per se*, but in providing a legal mechanism for opening up the private house-hold, and parental behaviour in particular, and thereby making the family more visible to social regulation (p.40).

Following this line of argument, welfare professionals such as teachers and social workers are also more likely to come under scrutiny and be more accountable for their decisions in relation to children and their rights.

Having looked at the theoretical justification, we turn now to examine the work of the European Court of Human Rights, a judicial forum which has done a great deal to raise the profile of children's rights.

(v) Litigation in Strasbourg

Established within the framework of a regional treaty, the European Convention on Human Rights and its enforcement agencies, the Court and Commission (1947), were conceived in the aftermath of World War II as a response to the conflict. A specific desire for unity and co-operation between the European States provided the impetus to establish new political orders, the Council of Europe being one such body (Beddard 1993). Working collectively, the Member-States of which there are now 40, seek to improve the standard of human rights within their territories and the recognition of the right to individual petition contributes to this endeavour. Such a novel innovation in the application of international law has allowed ordinary citizens to petition against their own country and to look at the Court as the final arbitrator in a dispute (Jacobs and White 1996, Mowbray 1994).

Whilst the individual applicant can only approach the Court through the Commission, issues have been raised which benefit many more individuals. As the definition of human rights changes and expands, The Council of Europe seeks to include more rights (Robertson 1993). Concurrently, the Court has a vital role to play in interpreting the present Convention and deciding whether human rights have been violated. This is shown by cases taken to Strasbourg in the 1980's which related to the breach of human rights held by British parents and their children with regard to school discipline. Reliance was placed repeatedly on two provisions ratified in the Convention in 1952:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (Article 3); and

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (Article 2 of the First Protocol)

There were allegedly over 30 British cases involving issues of corporal punishment and school suspension which were lodged with the Commission; the majority of which were registered after the Court's ruling on the Campbell and Cosans case in 1982. Statistics supplied by the Society of Teachers Opposed to Physical Punishment (STOPP) in its June 1983 newsletter add further to this figure:

> "thirty four 'corporal punishment' cases have now been submitted to Strasbourg. Twenty-two of the cases (fourteen beatings and eight

suspensions for refusing to be beaten) relate to incidents that took place after the 25 February 1982". (p5)[30]

There does, however, appear to be some discrepancy over these figures. Whilst STOPP and Hansard reports of parliamentary proceedings have consistently cited a total of over 30 cases since 1982, my research in Strasbourg revealed fewer. In April 1986, only 12 such cases were found to be registered and in July 1987, 21 cases concerning corporal punishment were pending before the Commission. The disparity between these numbers may be accounted for by those litigants whose knee-jerk reaction to failure within the British legal process, is to register their intention that they will be applying to Strasbourg, but for some reason ultimately fail to do so. The British figures may be further bolstered because some applications may have been in the process of being lodged in Strasbourg; a percentage of which may not have come to fruition. Further, it is possible that one application may have dealt with more than one child. Nevertheless, a substantial number of corporal punishment cases made their way through the Convention system in the 1980's[31]. What the cases all shared was reliance on the same articles within in the Convention relating to human dignity and the right to education.

A number of major cases by British parents litigated in Strasbourg after having failed to gain satisfaction in domestic courts provided the impetus for change. Through the cases of Tyrer, (1978), Campbell and Cosans, (1982) and Mrs X (1981) they successfully challenged the use of corporal punishment claiming that it constituted "degrading punishment" and contravened their "philosophical convictions". Furthermore, exclusion from school for refusing to accept the sanction was held to be a denial of "the right to education". Since the abolition of corporal punishment in maintained schools in 1986 outstanding cases have been resolved in clusters, in which the government has tended to make out-of-court settlements.[32].

Legislative reform during deliberations in the Townend case (1986) effectively meant that for children in the maintained school sector, and on the Assisted Places Scheme in non-maintained schools, debate over the issue of physical chastisement as a disciplinary sanction was redundant. Cases pending in Strasbourg since then have tended to be lodged on behalf of children in non-maintained schools, such as Costello-Roberts v UK (1993)[33] and the Court continues to be a focus for advocates of children's rights. Furthermore, recent legislation in the form of the Schools Standards and Framework Bill (1998) has removed the practice for all pupils, regardless of the nature of their school. Now all schools are compelled to explore alternative forms of chastisement.

Data analysis from the European Court of Human Rights in the form of Court transcripts has formed a key component of this paper. This concerns litigation dating back to the 1980's as well as emerging jurisprudence on the relationship between student and teacher. Discussion now turns to the wider issue of lessons learnt about classroom management and the policy implications for school boards and administrators. This is drawn from my analysis of the court transcripts and from my research of developments in European schools on children's rights.

(vi) Implications for School Boards and Administrators

In "sparing the rod" and moving to alternatives to corporal punishment, debates have taken place concerning the nature of schools, power-relations and the shift away from the emphasis on punishment towards one focusing on self-discipline and behaviour which supports a positive learning environment, (Parker-Jenkins 1999). These are the issues explored in the penultimate section of this paper.

A number of key principles emerge which help inform what policy on school discipline should incorporate. Drawing on behavioural psychology, punishment should be **immediate** and **effective**. It is not always possible but the closer the punishment is to the time that the act was performed, the more effective it is in inhibiting further acts. In order to achieve this it must be very clear what the school's position is on the offence and the scope, if any, for flexibility in responding to it. **Consistency** in practice is also a factor of importance, in order to diminish situations where a single offence prompts varying degrees of response from different teachers. To that, I would add, that policy should be **fair**, based on principles of proportionality and appropriate to the offence. For example, corporal punishment was typically used more frequently on boys than girls. If it had not been abolished by virtue of in influence of the European Court of Human Rights in Strasbourg, it is likely that it would have been found to breach domestic legislation in the form of the Sex Discrimination Act (1975) which does not countenance treating boys and girls differently in this instance. The alternatives to corporal punishment must also be seen to be fair, and used in an equitable manner regardless of gender, social class or ethnicity. This is echoed by the National Union of Teachers (1993) which recommends that behaviour policies be linked to the school's equal opportunities strategy. Finally, policy must be set on a proper legal footing: corporal punishment is not lawful in British schools, as elsewhere, but detention, for example, can also be challenged as potentially constituting unlawful imprisonment.[34].

In reconsidering the power relationship between teachers and children there is also scope for pupil advocacy within a democratic model of school management (TES 1999 a& b). As the earlier section of this paper highlighted, the exercise of authority and power is seen as an intrinsic and inseparable part of the teacher's role, but the misuse or abuse of such power needs to be challenged. It has been suggested that:

> "teachers have to give up being judge, jury and executioner and frequently at the same time counsel for the defence and prosecution as well" (Ritchie and Ritchie, p89).

In practical terms this would require opportunity for the pupils' voice to be heard in an acceptable manner and forum and where appropriate with support mechanisms (TES 1999 c & d). In many American states for example, school principles receive training to ensure that in discipline cases, "due process" has taken place and students have been allowed to give their side of the story (Miles, 1997). This is not advocated for every single misdemeanour which

takes place within the classroom but for more serious cases where the offence can lead to loss of privileges or exclusion. The courts here have so far always accepted that it would be impractical to abandon the dual role in dealing with minor misdemeanours in school.

Collectively, these principles mean that:

- School discipline should be seen as a management issue for and within the school as a whole. This requires seeing school discipline as a holistic model, rather than a single-issue strategy, and obtaining effective support from the school governing body.

- Policy on discipline relates to the wider context of school climate and culture and the fostering of an ethos in which all members of the school community are valued.

- Principles of social justice should underpin disciplinary policy, to ensure that sanctions are seen to exist within a firm but fair democratic system, and that there is clarity and consistency in both school rules and classroom rules.

- There needs to be a shift away from perceiving discipline as a narrow set of regulations to contain and control, to one which locates the concept more broadly in the curriculum, pedagogy and organisation of the school.

- Teachers require both pre and in-service education on alternative ethos of behaviour management, reinforced by training and networks of support.

- Adequate assessment of children's problems with appropriate follow-up counselling needs to be available for schools, and finally

- the cane (or paddle/strap/tawse) was cheap, its replacement is not. Alternatives to corporal punishment carry implications in terms of resourcing, staffing and training.

Teachers may fear loss of status and authority as a result of the removal of corporal punishment. Indeed there has been a call from politicians for its return [35] and some teachers may mourn the demise of this disciplinary sanction. Yet generally speaking, teaching associations have not, as corporate bodies called for its return. The majority view now being that we have moved on from the arid rehearsal of whether physical chastisement should or should not be used in schools, and instead recognise that the sanction belonged to a by-gone age, and that exploring alternative approaches is the only way forward. Added to this, however, is the need for on-going support for teachers in the form of resourcing and training. Responsibility for pupil behaviour still falls predominantly on teachers during the school day and their involvement in policy formulation, and their support in implementation is vital. Employing alternative sanctions to corporal punishment is not about abandoning discipline, it is about reconceptualising it within a framework of non-physical sanctions underpinned

by broader interpretations of what should be going on in schools. Neither is it about undermining teacher authority. It is about establishing rights and responsibilities for everyone within the school community.

Many schools in Britain have spent the last few decades exploring alternatives to physical chastisement, and some have addressed these broader issues concerning school ethos and management. Elsewhere the struggle to abolish corporal punishment goes on, with some countries such as South Africa recently removing the practice, (Squelch, 1997) and still other such as Australia (Slee, 1995) and the United States (Bloom, 1995) not having established an overall ban.

(vii) Analysis and Interpretation – Teachers' Rights and Children's Rights

There are significant implications for British teachers, and elsewhere, now that they have come to terms with their new position in society. As noted earlier, some teachers feared that the removal of corporal punishment would undermine school discipline and limit their authority as they attempted to exercise care and control over pupils. Indeed, some would argue that teachers cannot teach unless they have control and this can only come about through their own authority. The question which has emerged is whether this authority can be backed by non-physical sanctions, and whether teachers would be given the right conditions in which to work and adequate support for their task. Furthermore, the lack of deference to authority has meant that some people feel the pendulum should swing the other way towards giving greater authority to adults.

The experience of teachers in Britain has been that they undertake more and more responsibilities, experience a fall in salary comparable to other occupational groups, have their disciplinary rights limited and still operate within the confines of "professionalism". Writing in 1986 at the time of abolition George Walden, former Conservative Education Minister, maintained that;

> "it would be disastrous for everyone to allow our teachers to be demoralised, or to demoralise themselves further..... they must be decently paid. Teachers' pay has drifted down over the years, in relative terms, together with society's esteem"[36].

This still holds true. Teachers have had to adjust to major changes to the profession instigated by the educational reforms of the last decade (TES 1998 a & b). Whether from Strasbourg or Westminster changes have been imposed rather than negotiated which have significantly changed the status of teachers in Britain. The European Court produced findings in corporal punishment cases demonstrating its unwillingness to endorse the practice, and instead it supported parents' and children's rights. Strasbourg waved the stick which brought British teachers into line with their European counterparts.

It has been said that sympathy for children's rights was not necessarily forthcoming as there has been a progressive weakening of teachers' rights in

relation to teaching unions (Simon 1988). Today general resistance amongst teachers, parents and students at grass roots level often seems to be the only constraint upon the will of the government (Meignham 1993). This is directly related to pupils, for "increasing control of teachers has implications for the rights of children" (Jeffs 1995, p29). Ironically during a decade of a liberal/monetarist policy of allowing organisations to operate freely within the marketplace with a minimum of interference, education has been subject to a number of centrally imposed reforms and the New Labour government does not suggest a major departure.

As the Court has so effectively been used by parents and pupils to secure their rights, teachers might well be persuaded that Strasbourg could be a useful forum for their own grievances. [37] The Convention does not cover economic and political rights of the workplace, but reliance might be placed on "the right to education" as inclusive of specific matters in the curriculum. Likewise, teachers might invoke Article 8 when a school's employment or disciplinary policy appears to breach "the right to a private life". To date, however, teachers have not felt the effect of Strasbourg rulings to enhance their rights but to fetter them. With the greater valuing of children must come the valuing of teachers who also have rights in the educational process and should be supported by an effective and fair system (Wragg et al 1999). There are no quick-fix solutions to our present problems in school. To call for the return of the cane, for example, is merely to underestimate the problem and over-simplify the answer!

Furthermore, to rectify continuing concerns over discipline, a broader view needs to be taken of what is happening in schools. This begins with looking at the curriculum and supporting curriculum offerings, which engage pupils' interests and strengths. In the present climate of uniformity in Britain, for example, the less academic and special needs child struggles to keep pace in a system characterised by assessment, budgetary restraints and league tables. Increasing selection will undoubtedly exacerbate the situation for who will select the child who is unable to contribute highly to a school's academic performance? Within the contemporary ethos of competition, pupils may feel alienated from what is happening in schools. Furthermore, long-term fears of economic decline and unemployment make the value of education to the young more questionable.

> "If one assertion seems particularly fundamental to the children's rights movement, it is that *children should be seen as persons in their own right*' (Wringe (1981), p11 *emphasis added*).

This contrasts with the traditional assumption that children are in fact the property of their parents. It would appear to be the most basic of rights, for the National Council for Civil Liberties (1971) has made the point that 'children are the property of someone – if not of parents then the state'. Wringe adds that:

> "in spite of their lack of legal status, it is suggested, pupils in school have a moral right to the same consideration as anyone else and the

same amount of respect from their teachers as the clients of any other professional body (p11)".

There are a number of rights specifically related to children in schools. These are drawn from international treaties and children's rights advocates, delineated in figure 1.

Figure 1: Children's Rights Concerning Schools

- The right to be seen as persons in their own right
- The right to education
- The right to direct and manage one's own education
- The right not to attend school
- The right to work for money
- The right to freedom in personal appearance.
- The right to religious freedom
- The right to educational democracy
- The right to participate in school governance
- The right to appeal, representation and redress
- The right of access to knowledge
- The right to freedom of though and expression
- The right to be free of corporal punishment
- The right to be free of degrading or humiliating treatment or punishment
- The right to sexual freedom
- The right to live away from home

(Source: International Treaties and Children's Rights Advocates)

The European Court again could be a useful forum for a number of test cases on the extent of children's rights, and the provisions of the Convention are capable of being applied in new directions, such as special educational needs, school

accountability, exclusions and curriculum content. The potential effect of the Convention on education policy making and teaching practice in general is thus far-reaching, and groups of parents and pressure groups , such as those involved in the 1980's corporal punishment cases, could advocate educational objectives through Convention-based litigation and provide a catalyst for reform in the absence of government reform. Without judicial review, however, there remain significant implications for adults, both parents or carers, and teachers at school.

Oscar Wilde said:

"Children begin loving their parents.
After a time they judge them.
Rarely, if ever, do they forgive them."

Do children forgive their teachers? [38]. Application of many of the rights advocated for children has implications for, and challenge the legitimacy of schools, especially regarding discipline and the authority of the teacher. Many issues have traditionally been dealt with by reference to school rules and as evidenced by the foregoing list of rights, many of these traditional practices may appear to violate children's rights. Indeed as the majority of children between the age of five to sixteen are at school, and as their attendance is compulsory, unless alternative arrangements have been made, discussion of children's rights in many instances is actually that of 'pupil's rights'. Wringe notes one argument that

> "becoming a pupil is an act of complete subordination to one's teacher, incompatible with any notion of rights of participation in the control of the institution in which both find themselves (p126)."

There are areas in which a conflict of rights emerges in the school setting and today's administrators find themselves compelled to define the extent of pupils' rights vis-à-vis the teacher. Unlike the situation in other institutions the child may not actually be in school willingly. Some might contend that it is difficult to justify children's rights to be involved extensively in the running of schools and in personal choice in curriculum matters. This has been attempted through a very limited time scale (Croce *et al*, 1996), but these authors argue that 'the pupil has rarely done anything to 'give' him the right to say how school should be run, or how qualified teachers should conduct themselves' (p18).

Teachers may respond by asserting their rights and responsibilities, which may require the curtailment of pupils' rights. Invoking philosophical and hypothetical rights and applying them to the reality of the school situation in which teachers are charged with the education, moral and safe welfare of large numbers of children, could render them inoperable. Furthermore notwithstanding the logistics and dynamics of implementing rights of participation in school business or of personal appearance of pupils, there is the need to gain the acceptance of such claims by the teaching profession. As Wringe adds: 'it is often not what the pupil does which is considered offensive, but the assertion of his right to do it'. Similarly, current talk of children's rights might appear a trivial and impertinent intrusion which challenges the

authority and rights of teachers, and schools are unlikely to welcome the notion of children's rights as suggested earlier, for example by Holt (1974) and Farson (1978).

The discussion so far has explored the issue of children's rights and the implications they raise for schools, but they do not need to be seen in terms of necessarily challenging, underpinning or conflicting with authority. Instead school can be the place in which the rights and responsibilities of everyone in the community receive recognition. This point was raised earlier within the context of formulating a 'code of conduct'. Here values and attitudes should be translated into a framework of good practice. Osler (1994) highlights the role which teachers can play because 'the formal education system is likely to be the main means by which most children will become familiar with their rights' (p413). Further, children's rights can be a legitimate area for academic study. Starkey (1991) recommends that teachers should use international treaties as a point of reference in their lessons. Given the increasing significance of globalization, there is scope for international issues to be addressed, possibly within 'World Studies' and there are places for this within the curriculum and its guidelines on citizenship. Lansdown (1995) advocates teaching children to think about rights seriously, and Griffiths and Davies (1995) argue that schools where children are treated with fairness and justice create better societies for everyone.

> 'Respecting children's rights is not about allowing children to become dictators. It is about creating personal and social relationships which acknowledge children as participants in their lives and social structures which include and value rather than exclude and denigrate them' (Osler, p23).

Thus there is sufficient justification for children's rights, and these can be explored within the school setting, using both the formal and informal curriculum. But as with any social programme there are resource implications. Likewise, Franklin (1995) argues that 'rights do not come on the cheap', rather

> the issue of children's rights is fundamentally an issue about resources and their distribution. Securing rights for children will require government to reallocate resources in their favour (p18).

Talk of children's rights may thus stop at the level of aspiration if there is inadequate resourcing to implement them.

An important development in the area of contractual arrangements between schools, parents and pupils is the issue of home-school agreements. This is not a new phenomenon, and indeed has been used broad for many years. What is novel is the application of this approach to a British context. It has potential merit for it sets out expectations about rights and responsibilities. The National Association of Head Teachers in "A Willing Partnership" (1992) has documented case studies of schools attempting to adopt this approach. Up until not, a school's decision to move towards school contracts has been a matter of choice: as of September 1999, all schools in Britain were legally obliged to have this system in place. This provides the opportunity for making explicit, mutual responsibilities and expectations of parents and schools. The signed parental declaration also provides the opportunity for closer scrutiny of what is expected of pupils at school. What is also potentially very useful about this new initiative, is the possibility of dialogue not just with parents but also

with pupils, which gives more credibility to the notion of "a whole school" policy. Ideally, notes James (1999), the process of creating the agreement will be more significant than the agreement itself, and there is scope to include policy on attendance, behaviour, complaints, and equal opportunities. Although not legally binding, these documents provide the opportunity for making clear, school policy on discipline and assisting in a more effective way for rights and responsibilities to brought to the attention of all partners in the school system.

All of these issues raise a number of questions concerning the nature of the schools we want in the new Millennium; the relationships we expect, how we foster mutual respect in a non-violent society and what values are needed to fulfil this objective satisfactorily? Moreover, we need to be aware of the balance between children's rights and teachers' rights, and the respective role of teachers, parents, pupils and governors in developing policy that gives recognition and expression of rights for everyone in the school context, and most importantly, in resolving situations when rights are in conflict!

Even the youngest of children have rights, indeed much has been made of the need to provide them with special protection due to their vulnerability. There is support for the children's rights movement with lobbying from a variety of disparate groups. Whilst ensuring the safety and well-being of children, there is, nevertheless, a danger that we prolong adolescent dependence and keep children in a vacuum marked 'childhood', ignoring their decision-making abilities. Nowhere is this more evident that by the fact that even in the children's rights movement, we scarcely hear the voice of the child! Instead, theorists and treaties proclaim children's rights but the rhetoric is not necessarily translated into reality. Little attention is given to the resource implications of children's rights and the need for government to recognise financial obligations to support the rhetoric. We have seen that children's rights and children's needs are not necessarily the same thing, and greater emphasis should be placed upon seeing children as people in their own right. This point was explored with reference to schools and the ways in which educational institutions may infringe pupils' rights, but that is not to see the issue of children's rights within schools as a negative pursuit juxtaposed against teachers' rights. Schools can be the very place where human rights are recognised and supported for the greater good of the community. Furthermore, talk of children's rights not only raises the importance of teachers' rights in schools, but also leads us to consider how in the broader political context there has been increased central control of education and a diminution of everyone's rights in the system. We are in an ideal position to reflect on how we perceive children in our society and to determine what needs to be done on a number of fronts, not only to continue the momentum, but to give value and meaning to the lives of those people who will ultimately be responsible for us all in the future.

Conclusion

In Britain, physical chastisement has been defined primarily in terms of human rights, and has remained essentially an educational issue. The absence of a written constitution has meant that human rights have not been explicitly protected in any comprehensive document, as they have been in the US. The situation began to change

in the aftermath of the Second World War when Britain along with many other countries became a signatory to a number of declarations. It would seem appropriate to view the issue of corporal punishment in America within a broad framework of human rights, rather than as an educational issue alone, enshrined in custom and tradition, galvanising political strategies for effecting educational reform. State legislative action since the Ingraham case has rendered over half of the states now outlawing corporal punishment in schools. Although the Supreme Court has not interpreted the Eighth Amendment as prohibiting this sanction, there has been an increasing trend to place restrictions on its use or to abolish it completely. As such, a national standard may emerge through legislative reform rather than by Supreme Court decree. Predications remain speculative as to whether the American judiciary will choose to become actively involved in regulating school policy and use human rights documents as a catalyst for reform. Children in Europe are being regarded as having a status before the law worthy of equal protection and until the political or judicial will is formulated or regained to bring about similar reform in America, a fundamental disparity will exist between the rights of children living on either side of the Atlantic.

Furthermore, the use of the European Convention on Human Rights has raised the status of children's rights which both mirrors and extends that which pertains in American classrooms. More recently, events in America about the physical chastisement of children by parents and carers, calls into question the validity of corporal punishment in the school context. The topic of students' rights impacts immediately at the chalk face level and day-to day interaction with school personnel. The educational importance lies at policy level, and the legal and practical implications for classroom management. Given that just under half of American states still retain corporal punishment as a possible disciplinary sanction, whilst elsewhere, for example, Europe, South Africa and all of Australia (except Tasmania) have abandoned the use, there are clearly lessons to be learnt about an underlying trend in international developments in the field of human rights. This consensus of emerging social as well as legal norms suggests that the child is to be afforded equal protection to adults under the law. Advocacy for children's rights in America has taken place and continues, as does the work carried out in Europe, and collectively this can be seen as a general statement against the use of violence at home, in school and in society at large.

Notes

(1) The discussion draws on my research at the European Court of Human Rights, cited in full in my book Sparing the Rod: *Schools, Discipline and Children's Rights*, Trentham Books Ltd, 1999

(2) As cited in Rosen, M (1994) *The Penguin Book of Childhood.*

(3) See L J Borstelmann (1983) 'Children Before Psychology: Ideas about Children from Antiquity to the 1800's in W Kessen (Ed), *Handbook of Child Psychology*, vol.1, New York: Wiley.

(4) See for example, De Mause (1974) and P Aries (1962).
(5) For more on this theme, see L Gilkey (1965) *Maker of Heaven and Earth.*
(6) See *The Times,* 10th August 1986, p5, and the Sunday Times, January 2002 on the Church of the House of Prayer in Atlanta, USA.
(7) See S M Edmund (1996) *The Puritan Family,* New York: Harper and Row, p92.
(8) See Childright, No.34, February 1987,pp17-19 and EPOCH (1996).
(9) As cited in Freeman, 1965, p.127.
(10) See Rodham(1973), for more on the theme of "entitlement".
(11) As cited in Zeldin, 1973, p.336.
(12) Times Educational Supplement, (TES) 30 January, 1970, p.5.
(13) " " " 11 December, 1970, p.9
(14) " " " 19 May, 1972, p.6.
(15) See A.S.Neill "Freedom works" in Children's Rights , P.Adams et al, 1971, chapter 4.
(16) Times Educational Supplement, 2 October, 1970, p.6.
(17) National Council for Civil Liberties,"Children in School", Discussion Paper No. 1 in the series Children Have Rights (1970-1971).
(18) TES, 2 October, 1970, p.6.
(19) As cited in Wringe, pp8-9.
(20) Ibid.
(21) The Protection of Minors Bill, Hansard Parliamentary Debates, House of Lords, 5th Series, vol.No.347, 10 December 1973.
(22) Freeman(1983) provides interesting discussion of this point drawing on American case law.
(23) For more on this theme see Hyman I.A. and Wise J.H. (1979) (Eds) Corporal Punishment in American Schools, Philadelphia:Temple.
(24) Re.Gault(1967) US Supreme Court Reports, vol.387,(US 387).
(25) Re.Tinker(1969) US Supreme Court Reports, vol.21(US 393)
(26) Re.Winship(1970) US Supreme Court Reports, vol.25 (US 397)
(27) Re. Ingraham (1967) US Supreme Court Reports, vo.51 (US 430).
(28) As cited in Hafen B.C.(1976), "Children's Literature and the New Egalitarianism", Brigham Young Law Review, p.612.
(29) As cited in Freeman (1983), p.54.
(30) *STOPP* News, June/July 1983, p5.
(31) These include:

Mrs X and Ms X v UK (Application No.9471/81), The European Commission of Human Rights, Decision as to admissibility, 13 March, 1984, 166th Session Minutes 5-16 March, 1984 DH (84) 4, 9 May 1984,

Durairaj v UK (Application No.9114/80), The European Commission of Human Rights Decision as to admissibility, 11 October, 1984.

S J and A v UK (Application No.10592/83), Council of Europe, Human Rights News C (86) 8, 23 January, 1986.

The Studley Case, STOPP, Britain's Violent Teachers: A Dossier of Beatings Report to *STOPP,* 1982, P12-14.

Sams v UK ibid., p14-15

Arnold and Gray v UK ibid., p15-17

STOPP, Newsletter, June/July 1983, p3

Z v UK, STOPP, Britain's Violent Teachers, p17-18

Brant v UK, ibid., p3-4

Sweeting v UK, STOPP Newsletter, June/July 1984, p3

Hanvey v UK, ibid., p3-4

Blencoe v UK, STOPP Newsletter, June/July, p4-5

Lund v UK ibid., p6

(32) See council of Europe, Press Release, B (87) 27,21 August, 1987 and *Times Educational Supplement*, 2 October, 1987.

(33) Costello-Roberts v UK (1993), The European Court of Human Rights, 89/1991/341/414. Series A, No.247, 25 March 1993. See also Mowbray (1994) for an insightful discussion of this case in 'Corporal Punishment in Private Schools', *Journal of Forensic Psychiatry*, Vol 4, No 3, pp 546-550.

(34) Detention as unlawful was raised in British litigation in 19th Century litigation.

(35) See Parker-Jenkins (1996) "A Simple Solution that Never Worked", *Times Educational Supplement*, November 15, p26.

(36) As cited in the *Daily Telegraph* (1987), 5 February, p4.

(37) See for example the case of Surrey headmistress in a dispute over the "traditional" style of education, in The Times, 2 September 1986.

(38) This point was raised by one of my former Master's students, Kate Gray, as part of a course she took with me on children's rights.

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